Supreme Court, U.S.
FILED

01-228 MAY 24 2001

OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES
_____ Term, 2001

RONALD WATSON LAFFERTY, ***Petitioner,***

v.

STATE OF UTAH, ***Respondent.***

PETITION FOR WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

MICHAEL D. ESPLIN
Counsel of Record
MARGARET P. LINDSAY
ALDRICH, NELSON, WEIGHT & ESPLIN
43 East 200 North
P.O. Box L
Provo, Utah 84603-0200
Telephone: (801) 373-4912
Attorneys for Petitioner

122 pp

CAPITAL CASE

QUESTIONS PRESENTED

1. Did the Utah Supreme Court err in finding that substantial compliance with due process rights at the sanity proceedings at trial did not violate the Petitioner's due process right to a fair hearing on the issue of his competence to stand trial?

2. Did the Utah Supreme Court err in finding that the trial judge was correct in not holding a competency inquiry after being informed by Petitioner's counsel, that the Petitioner was not participating in the trial process in a rational manner?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 10

I. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE UTAH SUPREME COURTS' ERRONEOUS RULING THAT ALTHOUGH THE COMPETENCY HEARING HELD BY THE COURT DID NOT COMPLY WITH THE STATUTORY PROVISIONS, SUBSTANTIAL COMPLIANCE DID NOT VIOLATE THE PETITIONER'S RIGHT TO DUE PROCESS 10

II. THE COURT SHOULD GRANT CERTIORARI TO REVIEW THE ERRONEOUS FINDING OF THE UTAH

SUPREME COURT IN RULING THAT THE TRIAL COURT WAS CORRECT IN FAILING TO CONDUCT ANY ADDITIONAL INQUIRY INTO THE COMPETENCY OF THE PETITIONER AFTER HAVING BEEN INFORMED BY COUNSEL OF SPECIFIC CONCERNS WITH PETITIONER'S CONDUCT DURING THE TRIAL. 13

CONCLUSION 15

TABLE OF AUTHORITIES

Statutory and Constitutional Provisions

28 U.S.C. § 1257(a). 2

United States Constitution, Amend. XIV, § 1 . . . . . 3, 11

Utah Code Annotated §§ 77-15-1 et seq. 3, 11, 12

Cases Cited

Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed. 2d 103 (1975) 11, 13, 14

Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed. 2d 824 (1969) 11

Lafferty v. Cook, 949 F.2d 1591(10th Cir. 1991) 4

McGreggor v. Gibson, 2001 WL 359509 (10th Cir. Okla. (2001) 13, 14

Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 2d 815 (1966). 11, 14

State v. Lafferty, 20 P.3d 342, 2001 UT 19 . . . . . 1, 13

Walker v. Att"y General, 167 F.3d 1339 (10th Cir. 1999) . . . 11

No. _____

In the
SUPREME COURT OF THE UNITED STATES
_____ Term, 2001

RONALD WATSON LAFFERTY, ***Petitioner,***

V.

STATE OF UTAH, ***Respondent.***

PETITION FOR WRIT OF CERTIORARI TO THE UTAH STATE SUPREME COURT

Petitioner Ronald Watson Lafferty petitions the Court for a writ of certiorari to review the published decision of the Utah Supreme Court which affirmed the capital conviction and death sentence of the Petitioner on the grounds that the decision of the Utah Supreme Court is in conflict with the decisions of this Court and the rights guaranteed Petitioner by the Constitution of the United States.

OPINION BELOW

The published opinion of the Utah State Supreme Court is reported in *State v. Lafferty*, 20 P.3d 342, 2001 UT 19. A copy of this opinion is reproduced as Appendix A to this petition.

JURISDICTION

Petitioner Ronald Watson Lafferty was convicted and sentenced to death May 7, 1985, for two counts of first degree murder. Upon appeal to the Utah Supreme Court, his conviction and sentence were affirmed. Petitioner filed a petition for habeas corpus relief in the United States District Court for the District of Utah. When his petition was denied, Lafferty appealed the decision to the United States Court of Appeals for the Tenth Circuit and on January 3, 1992, that Court vacated Lafferty's conviction and sentence on the ground that the trial court had applied the wrong legal standard to determine competency.

Lafferty was then evaluated for competency at a hearing held on November 19, 1992, in the Fourth Judicial District Court for Utah County, State of Utah. At that hearing, applying the correct legal standard, Lafferty was found to be incompetent to proceed to trial and was committed to the Utah State Hospital for treatment. On May 2, 1994, following a hearing, a Judge of the Fourth Judicial District Court, State of Utah, found Lafferty competent to proceed to trial.

At a second jury trial, Lafferty was again convicted of two counts of first degree murder and sentenced to death. Lafferty appealed his conviction and sentence to the Utah Supreme Court which affirmed his convictions on February 23, 2001.

Petitioner now invokes the jurisdiction of this Court under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amend. XIV, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Code Annotated §§ 77-15-1 et seq.

The full text is set forth in the Appendix.

STATEMENT OF THE CASE

The factual background of this case is set forth in the opinion of the Utah Supreme Court (Appendix A). The evidence surrounding the criminal charges will not be recited here as the pertinent facts are those underlying the trial court's ruling on the competency of Lafferty to stand trial and the admission of victim impact evidence during the penalty hearing.

The appellant, Ronald Watson Lafferty, and his brother, Dan Lafferty, were charged with the commission of two capital felonies involving the death of Brenda Lafferty, a sister-in-law, and a niece, Erica Lafferty, in violation of Utah Code Ann. § 76-

5-202 (Supp. 1985). The two brothers were also charged with committing aggravated burglary of the victims' home and of committing aggravated burglary of the home of Cloe Low in violation of Utah Code Ann. § 76-6-203 (1978) and two counts of conspiracy to commit first-degree homicide of Chole Low and Richard Stowe, first degree felonies, in violation of Utah Code Ann. § 76-4-201 (1978).

Following a suicide attempt at the jail during which Lafferty was rendered unconscious for a period of time, the State filed a petition to determine Lafferty's competency. The trial court then severed the trial of Lafferty from that of his brother, Dan. After a jury trial, Dan was convicted of all counts, but the jury did not impose the death penalty. Ultimately, after several hearings, the trial court found that there was insufficient evidence to establish that Lafferty was incompetent to stand trial.

A jury trial was held April 25, 1985, through May 7, 1985, following which Lafferty was convicted of all counts and the death penalty was imposed on the two capital homicides. Following an unsuccessful appeal, Lafferty filed a habeas corpus petition in federal court which ultimately resulted in a ruling by the Tenth Circuit Court of Appeals granting Petitioner's writ upon the grounds that the state trial court had applied the wrong legal standard to determine the competency of the Petitioner. *Lafferty v. Cook*, 949 F.2d 1591(10th Cir. 1991).

On July 17, 1992, the State filed a petition for inquiry into Lafferty's competency. On July 28, 1992, the trial court ordered examinations to be conducted at the Utah State Hospital to determine Lafferty's competency to stand trial.

On November 19, 1992, a hearing on the issue of Lafferty's competency to stand trial was held before the Honorable George E. Ballif. Following the hearing, the trial court filed a decision finding Lafferty unable to assist his counsel in a rational and realistic way and that as a result of mental illness, Lafferty was not competent to proceed to trial. The court ordered Lafferty remanded to the Utah State Hospital for treatment of his illness.

On February 4, 1994, a further competency hearing was held before the Honorable Steven L. Hansen. Judge Hansen determined that Lafferty was currently competent to proceed to trial and Findings and conclusions were entered by the court on May 2, 1994.

Trial was commenced on March 1, 1996, beginning with jury selection. During the jury selection process, the State raised concerns of "new" allegations concerning the issue of Lafferty's competency raised by a defense Motion to Keep Petitioner in the Courtroom and requested an opportunity to have the State's experts further examine Lafferty relative to competency. The trial court determined to have a full competency hearing using the experts who had previously examined Lafferty.

On March 8 & 14, 1996, a competency hearing was conducted. During the course of the hearing several medical reports and evaluations were admitted into evidence. During the competency hearing, evidence from the eight experts who examined the Petitioner revealed that the Petitioner expressed to the evaluators certain "beliefs" which effected his perception of the trial and participants, including his counsel, the judge,

prosecutors, and jury.

Evidence was introduced that indicated that the Lafferty received revelations, some of which came from God, but some of which came from evil beings or spirits identified by Lafferty as "travelers". Lafferty identified the "travelers" as consisting of homosexual spirit beings/entities with the power to inhabit bodies of living persons or "hosts"--including Judge Hansen, the prosecutors, his counsel, the jurors and witnesses. The evil travelers have power to "exude evil" and to control the persons they inhabit. Being homosexual, they would enter the bodies "from the rear" and have the ability to travel from one human host to another since they knew "key words"necessary to travel.

Lafferty identified the most powerful of the travelers to be evil travelers including "Moroni/Lucifer/Hitler", the most cunning and evil of the travelers; "Budda/Satan/Japan", "Beelzebub/Mussolini/Hitler", and, Watson Lafferty, Sr., Petitioner's father, hosted by Dan Lafferty, Petitioner's brother.

The evidence indicated that Lafferty deemed himself to have powers not possessed by normal persons. The evidence indicated that he believed that he, in a pre-mortal spiritual existence was enlisted in a war between good and evil on the side of God where he contested with Lucifer "in the manner of spiritual warfare". Lafferty was successful in the spiritual battle and as a reward, was given Lucifer's mate, Diana, to be his mate in his earthly existence. (Diana was Lafferty's wife prior to divorcing him).

The evidence indicated that Lafferty believed himself to be a good traveler trapped inside his physical body since he did

not remember or know the "key words" which allowed him to travel. Prior to Lafferty's suicide attempt in 1985, he had asked his brother Dan to lay his hands on him and to cast out the evil spirits inhabiting his physical body. All of the spirits were cast out with the exception of one which refused to leave his body. Lafferty indicated that the one which would not leave was his own spirit which could not leave until he learns the key words.

The evil travelers have the purpose, and have conspired, to use their powers against Lafferty. Lafferty believed that they would influence his trial by influencing the judge, jury and witnesses as well as his own counsel. The evidence adduced at the hearing indicated that he believed that the evil travelers had already entered Dr. Cohen and Dr. Wooton during their interviews with Petitioner at the Utah County Jail. Lafferty indicated to examiners that during an examination conducted at the jail by Dr. Wooton, he became aware that the traveler "Moroni" had entered Dr. Wooton. Upon leaving the interview room, his discernment of "Moroni" was confirmed when he saw the word "Moroni" in large letters on the wall of the jail.

The examiners also testified that Lafferty related an experience where a being had appeared in his jail cell and attempted to attack him but was repelled when the Petitioner lay back on his bunk and put his feet up as if to kick the being. The being went out through the wall of the cell. He also recounted occasions while housed at the Utah State Prison where the Petitioner had discerned the presence of evil travelers and had been warned by "helper" beings.

The evidence indicated that Lafferty believes that there is no more powerful being on earth than himself and that he holds

the "office of Jesus Christ". Although he cannot travel from his physical body until he learns the "key words", he possess several powers to protect him and others from the evil travelers. By spiritually "cleansing" his cell each morning, he makes it difficult for evil travelers to enter. He also has the use of what he described as a device similar to a "reflector shield" which is a "spiritual aura" capable of repelling anything abrasive. Lafferty believes he possesses the power to "discern" the presence of the travelers when they appear. Petitioner also uses verbal "outbursts" to nullify and confuse the travelers. Lafferty believes the evil travelers understand and respond to the verbal messages of the Petitioner and choose not to contend with him.

The evidence showed Lafferty to believe that "helper spirits"--beings different from travelers--would come to assist when evil appeared. He described these beings as being similar to "guardian angels" in purpose, but not guardian angels. Lafferty was able to know when the "helper" beings were present by hearing a buzz. The buzzing was loud enough that Lafferty expected others, including his counsel, to be able to hear it.

At the hearing, all of the expert witnesses for the State--Drs. Gardner, Golding, Cohen, and Wooton--opined that Lafferty was competent to proceed with trial. On the other hand, the expert witnesses called by the defense--Drs. Howell, Groesbeck, Heinbecker, and Washburn--all opined that Lafferty was not competent to proceed. Following the hearing, the trial court ruled that Lafferty was competent.

On April 9, 1996, during the jury trial an *in camera* meeting, counsel for the Petitioner raised concerns about Lafferty's continued complaints about the buzzing of the helper

spirits and indicated to the court that the Petitioner had indicated that he was having difficulty hearing the witnesses over the buzzing. Counsel also indicated that the Petitioner was concerned that no one else could hear the buzzing and asked if his counsel could bring a dog into the court room to verify the noises since the dog could hear the frequency of the noises. Counsel also indicated that Lafferty complained that the jail had put something in his food and that his behavior varied from being hyper and animated to being morose and depressed. Counsel also indicated that one of the defense experts had seen him at the Utah County Jail the night before and found him to be very manic and agitated.

Defense counsel further indicated that the defense had been able to control the behavior of the Petitioner to some extent by the use of paralegals who would distract Lafferty when he became agitated and that counsel had been able to avoid the court's removal of the Petitioner from the courtroom by this process. The attorneys for the Petitioner expressed concern that the jurors were starting to watch the Petitioner and were taking notes on his conduct and that the lawyers were concerned that his state of agitation may become out of control. Counsel also indicated that the Petitioner had expressed concern that one of his attorneys, Mr. Esplin, had become influenced by the traveler Moroni. The court took no further action to review competency.

On April 10, 1996, a verdict of "guilty" on two counts of first degree criminal homicide, two counts of aggravated burglary, and two counts of conspiracy to commit criminal homicide was rendered.

On April 16, 1996, the penalty phase portion of the trial was conducted before the same jury which convicted Lafferty. At the close of the proceedings, the jury returned a sentence of death on both counts of capital homicide.

On May 31, 1996, Lafferty was sentenced to death on the capital homicide charges and a warrant of execution was signed by the Honorable Steven L. Hansen, Fourth District Court.

On June 10, 1996, Lafferty filed a Motion for New Trial pursuant to Rule 24 of the Utah Rules of Criminal Procedure. Lafferty argued that new proceedings were justified on the following grounds: One, that the trial court erred in its competency determination; and two, that the trial court erroneously admitted videotaped victim impact evidence showing the baby with her throat slashed lying in her crib during the penalty phase. On September 9, 1996, the trial court denied Lafferty's motion. Lafferty then appealed to the Utah Supreme Court who affirmed his conviction on February 23, 2001.

REASONS FOR GRANTING THE WRIT

I.

THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE UTAH SUPREME COURT'S ERRONEOUS RULING THAT ALTHOUGH THE COMPETENCY HEARING HELD BY THE COURT DID NOT COMPLY WITH THE STATUTORY PROVISIONS, SUBSTANTIAL COMPLIANCE DID NOT VIOLATE THE PETITIONER'S RIGHT TO DUE PROCESS.

Whether a defendant is competent to stand trial is a question of federal constitutional law. To be competent to stand trial, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that the defendant must have the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense. *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed. 2d 824 (1969); *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed. 2d 103 (1975); *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 2d 815 (1966). The hearing to determine the competence of a defendant to stand trial must procedurally and substantively comply with due process. *Walker v. Att"y General*, 167 F.3d 1339, 1343 (10th Cir. 1999). Where a procedural due process , competency claim is raised, the individual is held to a lower burden of proof than in a substantive competency claim. *See Id.* at 1344. Because the conviction of an accused person while legally incompetent to stand trial violates due process, states are required to provide adequate procedures to protect accused individuals. *Pate v. Robinson, Infra.* The State of Utah has enacted Utah Code Annotated §§77-15-1, *et.seq.*, which sets forth the procedures designed to protect against an incompetent defendant from being tried and convicted.

Petitioner asserted on appeal that the state trial court failed to comply with the clear provisions of the statute governing the competency hearings in Utah in several particulars. First, the Petitioner claimed that the failure to appoint independent examiners violated his right to a fair hearing, in that the examiners appointed by the court were experts whom had been designated by prosecution and defense as party witnesses on the issues pertaining to Petitioner's mental

health defenses. Those witnesses split exactly along "party lines" in their opinions, with those of the state finding Petitioner competent and those of the defense finding the Petitioner incompetent.

Second, Petitioner claimed that the failure to observe the statutory time periods set forth in the statutes violated his right to due process. The Utah statute codified at Utah Code Annotated § 77-15-5(6) provides that the examiners shall provide written reports within 30 days to the court and counsel and then, after the reports have been received, the hearing shall be held not less than five days and not more than fifteen days from the receipt of the reports. The Court set the hearing without having received any reports and in fact, some witnesses who testified on behalf of the Petitioner did not have time to prepare reports as the Petitioner was required to proceed first with witnesses. Neither Petitioner's counsel nor his experts had adequate opportunity to examine or review the any written reports of state's experts prior to the hearing which compromised counsel's ability to effectively conduct examination of the defense witnesses and to effectively cross examine the state's witnesses.

Third, the statutes governing competency proceedings require that the reports of the examiners address specific factors which are set forth in order to insure that a defendant not only has a factual understanding, but also a rational understanding of the proceedings and to insure that the defendant can assist in his defense. The reports of the examiners who had time to file reports prior to the hearing did not address the statutory factors.

The Utah Supreme Court ruled that the statute did not

require the appointment of independent examiners, but simply examiners who were not currently treating the Petitioner. Although the appellate court agreed that holding the hearing within one day of the receipt of expert reports was "error" and not in compliance with the statute, the court found the error to be "harmless". *State v. Lafferty*, 2001 UT 19 at ¶ 37. The court also held that while the reports did not address the statutory factors and although there may have been a "violation of the statute", such error was also harmless. *Lafferty*, 2001 UT 19 at ¶¶ 38-42.

This Court should review the findings of the Utah Supreme Court as those findings are in conflict with the decisions of this Court in that failure to follow procedures set forth to protect constitutional rights cannot be considered harmless error. The rulings of the Utah Supreme Court are conflict with the principles of a fair hearing required by the decisions in *Drope, Infra.*, *Pate, Infra.*, and with the 10th Circuit decisions in *McGreggor v. Gibson*, 2001 WL 359509 (10th Cir. Okla. (2001).

II.

THE COURT SHOULD GRANT CERTIORARI TO REVIEW THE ERRONEOUS FINDING OF THE UTAH SUPREME COURT IN RULING THAT THE TRIAL COURT WAS CORRECT IN FAILING TO CONDUCT ANY ADDITIONAL INQUIRY INTO THE COMPETENCY OF THE PETITIONER AFTER HAVING BEEN INFORMED BY COUNSEL OF SPECIFIC CONCERNS WITH PETITIONER'S CONDUCT DURING THE TRIAL.

As set forth above, during the trial, Petitioner's counsel became concerned with the conduct of the Petitioner and the Petitioner's ability to participate in proceedings in a rational manner. Counsel related specific instances where the Petitioner complained of hearing a loud buzzing sound, sufficiently loud that he could not hear the witnesses and became upset when informed that no one else could hear the noise. Lafferty suggested that the parties bring a dog into the courtroom to verify that there was a buzzing. Counsel reported that a psychiatrist had examined the Petitioner and found him to be "manic and agitated". Counsel indicated that they had to use paralegal's assistance to distract the Petitioner from inappropriate conduct in the presence of the jurors and questioned whether or not Petitioner was even part of the trial. Following the *in camera* concerns of the Petitioner's counsel, the defense called Dr. Gillette, the expert who had conducted a mental status evaluation on the Petitioner the night previous. He testified that in his opinion, the Petitioner was at the time, unable to have a rational understanding of the proceedings due to a deterioration in his mental state.

Pate v. Robinson, 383 U.S. 375 (1966), requires that when evidence of incompetency becomes manifest during trial, the court should conduct an inquiry to determine the defendant's competency. The decision of this Court in *Drope, infra.*, provides that a defendant's demeanor, and irrational behavior during trial are factors which may be considered in considering a procedural competency claim. *Drope*, 420 U.S. at 180. The United States 10th Circuit Court of Appeals summarized Petitioner's demeanor, irrational behavior, medical opinion, and representations of defense counsel as factors which would support a competency inquiry. In *McGregor v. Gibson*, 2001

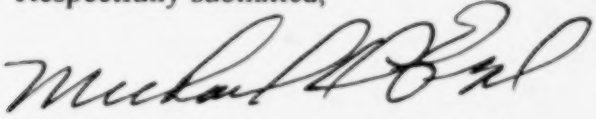
WL 359509 (10th Cir. Okla. 2001), indicated that any one factor could require a review of the competency of a defendant, but that a "totality" of the circumstances review should be considered and in the event that review suggests that the trial court should have had bona fide doubt as to the continued competency of a defendant, then a defendant's procedural competency rights have been violated. The conduct described and concerns expressed by defense counsel together with the medical opinion should have raised a bona fide doubt to the trial court as to the competency of the Petitioner.

This Court should review the decision of the Utah Supreme Court in upholding the failure of the trial court to inquire into the competency of the Petitioner once the issue was raised by his counsel, a medical doctor, and Petitioner's conduct in the courtroom.

CONCLUSION

For these reasons, Petitioner requests that a writ of certiorari issue in this case.

Respectfully submitted,



MICHAEL D. ESPLIN
(Counsel of Record)
MARGARET P. LINDSAY
Attorneys for Petitioner